Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements	WC Docket No. 02-112
2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1902 of the Commission's Rules	CC Docket No. 00-175

COMMENTS OF BELLSOUTH

BELLSOUTH CORPORATION

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BellSouth Corporation, by counsel and on behalf of itself and its wholly owned subsidiaries ("BellSouth"), respectfully responds to the *Further Notice of Proposed Rulemaking* (*"FNPRM"*)[1] in the above-captioned proceeding.

As discussed more fully herein, BellSouth urges the Commission to take the following actions. First, the Commission should not adopt any additional rules or safeguards to govern a BOC's provision of in-region, interstate and international, interexchange telecommunications services[2] on an integrated basis upon the expiration of the Section 272 structural separation

[1] *See Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112; *2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules*, CC Docket No. 00-175, *Further Notice of Proposed Rulemaking*, FCC 03-111 (rel. May 19, 2003) ("*FNPRM*").

[2] The positions set forth herein by BellSouth apply to a BOC's provision of both in-region, interstate and international, interexchange services. The Commission should apply the same regulatory treatment to a BOC's provision of interstate and international interexchange telecommunications services. In addition, throughout the instant pleading, BellSouth uses the following terms interchangeably: in-region, interstate and international, interexchange telecommunications services; in-region, interexchange telecommunications services; in-region, interexchange services; in-region, interLATA services; and long distance services.

requirements. Second, the Commission should find that a BOC providing in-region, interexchange telecommunications services in the absence of a separate affiliate does not possess market power and therefore should not be subject to dominant carrier regulation. Existing statutory and regulatory safeguards eliminate the need for additional regulation post sunset. Moreover, minimizing the imposition of unnecessary, costly, and burdensome regulations is fully consistent with the deregulatory framework promoted by the Telecommunications Act of 1996 ("1996 Act'").

I. INTRODUCTION AND SUMMARY

On May 19, 2003, the Commission released a *FNPRM* seeking comment on the appropriate classification of the provision of in-region, interstate and international, interexchange telecommunications services (in-region, interexchange services) by Bell Operating Companies ("BOCs") and incumbent independent local exchange carriers ("independent LECs"). The *FNPRM* asks, among other things, how changes to the competitive landscape within the interexchange market should affect this classification, as well as what approach is appropriate for BOCs and independent LECs, if and when these carriers provide in-region, interexchange services on an integrated basis, rather than through a separate affiliate.[3] The Commission further asks whether there is a need for dominant carrier regulation of a BOC's in-region, interexchange services after sunset of the Section 272 structural and nonstructural safeguards in a particular state.[4]

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[3] *FNPRM*, ¶ 1.

[4] *Id*., ¶ 2.

BellSouth welcomes the opportunity to participate in the instant proceeding. This rulemaking is a logical next step in Congress's and the Commission's on-going efforts to foster increased competition in the market for interexchange telecommunications services. For more than twenty years, the Commission has sought to eliminate unnecessary government regulation and allow market forces to drive competition in the long distance market. This trend, which was affirmed by Congress with the passage of the 1996 Act, has enabled the market for interexchange services to explode with new entrants, lower prices, and innovative service offerings.

The Commission's deregulatory efforts have included, among other things, relaxing the tariff filing and Section 214 facilities authorization requirements for nondominant interexchange carriers;[5] classifying AT&T – which possesses the greatest market share in the long distance market – as a non-dominant carrier;[6] and eliminating the separate affiliate requirements imposed on BOCs and independent LECs[7] as a condition for non-dominant treatment of their provision of

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[5] *See, e.g., Policy and Rules Concerning Rates for Competitive Carrier Services and Facilities Authorizations Therefore*, CC Docket No. 79-252, *Second Report and Order*, 91 FCC 2d 59 (1982) (applying permissive detariffing to resellers of terrestrial common carrier services); *Fourth Report and Order*, 95 FCC 2d 554, 575-80, ¶¶ 31-38 (1983) (applying permissive detariffing to all other resellers and specialized common carriers, including MCI and GTE Sprint); *Fifth Report and Order*, 98 FC 2d 1191, 1195-1200, ¶¶ 6-11 (1984) (applying permissive detariffing to domestic satellite carriers, miscellaneous common carriers, carriers providing domestic, interstate, and interexchange digital transmission services, and certain affiliates of carriers offering interstate, interexchange services); *Sixth Report and Order*, 99 FCC 2d 1020, 1028, n.29, ¶ 12 (1985), *vacated*, *MCI Telecomms. Corp. v. FCC,* 765 F.2d 1186 (D.C. Cir. 1985), aff'd, *MCI V. AT&T*, 512 U.S. 218 (1994); *See Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended,* CC Docket No. 96-61, *Second Report and Order*, 11 FCC Rcd 20730 (1996) (mandatory detariffing for nondominant interexchange carriers).

[6] *Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, *Order,* 11 FCC Rcd 3271 (1995) ("*AT&T Non-Dominance Order*").

[7] BOCs are subject to the separate affiliate requirements of Section 272. Independent LECs are subject to similar separate affiliate requirements contained in Section 64.1903 of the Commission's rules. *See* 47 C.F.R. § 64.1903.

out-of-region, interexchange services.[8] In addition, the Commission has satisfied its statutory obligation by allowing those BOCs that have opened their local markets to competition to offer in-region, interexchange services.[9] Most recently, pursuant to Section 272(f)(1), the Commission allowed the relevant provisions of Section 272 to sunset for Verizon in New York.[10]

All of the actions described above have helped foster a more vibrant long distance market that allows carriers to be more responsive to customer demands and offer an expanded menu of services and pricing packages. The instant proceeding affords the Commission the opportunity to further advance competition in the long distance market by continuing its deregulatory efforts.

As discussed more fully herein, BellSouth urges the Commission to take the following actions. First, the Commission should not adopt any additional rules or safeguards to govern a

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[8] *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-149 and CC Docket No. 96-61, *Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61*, 12 FCC Rcd 15756, 15764, ¶ 9 ("*LEC Classification Order*").

[9] *See, e.g.*, Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York, CC Docket No. 99-295, Memorandum Opinion and Order, 15 FCC Rcd 3953 (1999); Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Arkansas and Missouri, CC Docket No. 01-194, Memorandum Opinion and Order, 16 FCC Rcd 20719 (2001); Application by Verizon Maryland Inc., Verizon Washington, D.C. Inc., Verizon West Virginia Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Maryland, Washington, D.C., and West Virginia , WC Docket No. 02-384, Memorandum Opinion and Order, FCC 03-57 (rel. Mar. 18, 2003).

[10] *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, *Memorandum Opinion and Order*, FCC 02-336 (rel. Dec. 23, 2002).

BOC's provision of in-region, interexchange telecommunications services on an integrated basis upon the expiration of the Section 272 structural separation requirements. Second, the Commission should not apply dominant carrier regulation to the BOCs' provision of in-region, interexchange services outside of an affiliate. Existing statutory and regulatory safeguards eliminate the need for additional regulation after the separate affiliate requirements expire. Moreover, minimizing the imposition of unnecessary, costly, and burdensome regulations will continue the deregulatory framework for the interexchange market initiated by the Commission decades ago and envisioned by Congress in adopting the 1996 Act.

II. THERE IS NO NEED TO ENGAGE IN AN EXTENSIVE MARKET ANALYSIS TO DETERMINE THAT BOCS LACK MARKET POWER IN THE IN-REGION, INTEREXCHANGE MARKET.

The Commission devotes nearly half of the *FNPRM* to seeking input on how to define and analyze the relevant markets as a prerequisite to determining the appropriate regulatory classification and requirements for a BOC's provision of in-region, interexchange telecommunications services in the absence of an affiliate.[11] BellSouth submits that such an exercise is unnecessary in this instance. There is no need to conduct an extensive, detailed market analysis to arrive at the inevitable conclusion that BOCs do not possess market power when providing in-region, interexchange services either on an integrated basis or through a separate affiliate.

The Commission has already concluded that interLATA affiliates should be classified as non-dominant in their provision of in-region, interstate and international, interexchange

[11] *See FNPRM*, ¶¶ 8-21.

services.[12] The Commission based this conclusion on the inability of BOCs to use or leverage any alleged market power in the local exchange or exchange access markets to enable their Section 272 affiliates to raise and sustain prices of in-region, interstate, domestic interLATA services significantly above competitive levels by restricting their affiliates' output.[13] The act of integrating the long distance operations of an affiliate does nothing to alter the market for interexchange services and does not somehow transform a BOC into a dominant player in this market. BOCs providing in-region, interexchange telecommunications services have no greater ability to unilaterally raise and sustain prices above competitive levels and exercise market power whether operating through a separate affiliate or on an integrated basis.

The fact of the matter is that competitive market forces combined with on-going regulation (*e.g.,* Section 251; Section 272(e); Sections 201 and 202; Section 208; price cap regulation; equal access obligations) are more than sufficient to curtail any anticompetitive behavior in the absence of structural safeguards. It is indisputable that competition in the interexchange market is growing. In fact, this market is more competitive now than it was in 1997 when the Commission decided to accord non-dominant treatment to the BOCs' provision of interexchange services through separate affiliates.[14] As the *FNPRM* points out, a number of developments have enhanced competition in the interexchange market, with one such development being BOC authority to offer in-region, interLATA telecommunications services in

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[12] *LEC Classification Order,* 12 FCC Rcd at 15762-63, ¶ 6.

[13] *Id*. at 15762, ¶¶ 6-8.

[14] *See LEC Classification Order,* 12 FCC Rcd 15756.

42 states and the District of Columbia.[15] Other developments include: (1) the rise in bundled offerings; (2) the increase in the number and types of wide-area mobile calling plans; (3) the increased substitution of wireless service for traditional wireline service; and (4) the growth in Internet-based applications (*e.g.,* instant messaging, email).[16]

According to the latest report on the long distance industry, as of 2001, AT&T's share of the toll revenue market was slightly less than 38%, and MCI's share was almost 24%. Thus, the two largest IXCs together claimed over 62% of the market, while more than 1,000 other long distance carriers held nearly 38% of the remaining market.[17] As of 2002, AT&T's share of the household market was slightly less than 37%. MCI followed behind with a share of 16%. The BOC affiliates accounted for a combined share of approximately 16%, and all other long distance carriers held 32% of the market.[18] As the statistics above demonstrate, the long distance market is very competitive, and the share held by the BOCs, collectively and individually, is modest.

A review of the factors the Commission has traditionally considered in evaluating whether a carrier possesses market power all support a finding that BOCs lack market power in the interexchange market. First, BOC market share (individually or collectively) is relatively small. Second, the barriers to entry into this market are low. Third, supply and demand

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[15] *See supra* note 9.

[16] *FNPRM*, ¶ 8.

[17] *See Statistics of the Long Distance Telecommunications Industry*, Industry Analysis & Technology Division, Wireline Competition Bureau, at 17, Table 7 (Shares of Total Toll Service Revenues, Long Distance Carriers Only) (May 2003).

[18] *See id.* at 29, Table 15 (Market Shares of Households By Region).

elasticities for interexchange services are high. All of these factors curtail a BOC's (and its affiliate's) ability to unilaterally raise prices for long distance services by restricting output or controlling an essential input – the standard for dominant carrier regulation.[19] Given this clear absence of market power, there is no need to undergo a full-blown market analysis in the instant case. Defining the relevant product and geographic markets is not necessary to reach the obvious conclusion that, whether in the presence or absence of a separate affiliate, BOCs lack market power in the provision of in-region, interexchange telecommunications services.

It is clear that the Commission's real concern lies with the potential abuse of alleged market power in the local markets, not the interexchange market.[20] For example, the *FNPRM* seeks comment on the incentives and abilities of BOCs to leverage their alleged market power in the local exchange and exchange access markets to misallocate costs, raise rivals' costs, discriminate, and engage in predatory price squeezes to gain an advantage in the interexchange market.[21] As demonstrated more fully below, there are adequate safeguards in place today to preclude such conduct, whether or not a long distance affiliate is present. Therefore, rather than expend an inordinate amount of time conducting an extensive and unnecessary market analysis to determine whether BOCs possess market power in the interexchange market, the Commission should focus on addressing its concerns about the BOCs' alleged control in the local exchange and exchange access markets. A rational analysis will lead the Commission to only one conclusion – applicable statutory and regulatory safeguards are more than sufficient to prevent

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[19] *See FNPRM*, ¶ 5.

[20] *See FNPRM*, ¶¶ 29-32.

[21] *Id.*, ¶ 29.

any anticompetitive conduct by BOCs providing in-region, interexchange telecommunications services on an integrated basis.

III. EXISTING STATUTES AND REGULATIONS ARE SUFFICIENT TO PRECLUDE BOCS FROM ENGAGING IN ANTICOMPETITIVE CONDUCT.

The *FNPRM* includes a series of questions about the propriety of and the need for additional regulations (*e.g.,* performance measures, modified separate affiliate requirements, dominant carrier regulation) when a BOC integrates its long distance operations after the expiration of the relevant Section 272 requirements.[22] This section addresses the Commission's concerns about the incentives and abilities of BOCs to leverage their alleged market power in the local markets to engage in cost misallocation, discrimination, or predatory price squeezes to gain an advantage in the interexchange market.[23] As BellSouth demonstrated in the *Section 272 Sunset* proceeding[24] and reiterates here, there is no need to impose any new or modified requirements on BOCs providing in-region, interexchange telecommunications outside of a separate affiliate in order to prevent anticompetitive behavior.[25] There is a full menu of statutory and regulatory safeguards that preclude a BOC from leveraging any alleged power in the local market to gain an advantage in the long distance market upon the expiration of the Section 272 requirements. As the Commission itself has recognized,

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[22] *See FNPRM*, ¶¶ 35, 39, 47.

[23] *Id*., ¶ 29.

[24] *Section 272(f)(1) of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, *Notice of Proposed Rulemaking*, 17 FCC Rcd 9916 (2002) ("*NPRM"*).

[25] *See* Comments of BellSouth Corporation, WC Docket No. 02-112, at 18-20 (filed Aug. 5, 2002); Reply Comments of BellSouth Corporation, WC Docket No. 02-112, at 16-18 (filed Aug. 26, 2002).

> A number of safeguards will be available to prevent discriminatory behavior by BOCs after the separate affiliate requirements of section 272 cease to apply. . . . [S]ection 251(c)(5), section 251(g), and the Commission's rules imposing network disclosure and equal access requirements oblige BOCs to provide exchange access on a nondiscriminatory basis. In addition, intraLATA services and facilities must be provided on a nondiscriminatory basis under section 251(c)(3), and the provision of interLATA services and facilities will continue to be governed by the nondiscrimination provisions of sections 201and 202 of the Act. In addition, once local competition develops, it will provide a check on the BOCs' discriminatory behavior because competitors of the BOC affiliates will be able to turn to other carriers for local exchange service and exchange access.[26]

The statutory and regulatory requirements listed above will not go away after the separate affiliate safeguards expire. For example, the Section 251 obligations imposed on BOCs do not cease upon sunset of the Section 272 requirements. These carriers will remain statutorily obligated to offer interconnection and unbundled network elements ("UNEs") on a just, reasonable, and non-discriminatory basis.[27] This and other safeguards will continue to exist and will protect competition more efficiently and at a significantly lesser expense than retaining the Section 272 restrictions.

This is not the first time the Commission has considered the impact of the elimination of structural safeguards. Beginning with its 1986 *Computer III Order*, the Commission has been moving away from reliance on structural separation requirements as a means of addressing alleged competitive threats. In the Commission's own words, it has acknowledged that "structural separation imposes direct costs on the BOCs from duplication of facilities and

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[26] *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended,* CC Docket No. 96-149, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 21905, 22036, ¶ 271 (1997) ("*Non-Accounting Safeguards Order*").

[27] 47 U.S.C.§ 251(c).

personnel, the limitations on joint marketing, and the inability to take advantage of scope economies," with the end result being that "the BOCs are unable to organize their operations in the manner best suited to the markets and customers they serve."[28]

The Commission has repeatedly reaffirmed its position that nonstructural safeguards adequately protect competition in a variety of markets. For example, in 1993, the Commission concluded that the public interest would not be served by a structural separation requirement for PCS operations of LECs.[29] The Commission said, "by seriously limiting the ability of LECs to take advantage of their potential economies of scope, such requirements would jeopardize, if not eliminate, the public interest benefits we seek through LEC participation in PCS."[30]

In all of these instances, the elimination of the structural separation requirements did not lead to a parade of abuses by the BOCs. To the contrary, the discontinuation of structural separation increased competition in the relevant markets by enabling BOCs to develop innovative service offerings in the absence of inefficiencies and unnecessary costs. Clearly, the remaining nonstructural safeguards were – and continue to be – sufficient to curtail potential competitive harms.

All of the safeguards cited above, as well as a number of other statutory requirements, will protect against any potential anticompetitive behavior by BOCs after the separate affiliate

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[28] *Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), et al.,* CC Docket No. 85-229, *Report and Order*, 104 FCC 2d 958, 1008, ¶ 91 (1986) ("*Computer III*").

[29] *Amendment of the Commission's Rules to Establish New Personal Communications Services*, GEN Docket No. 90-314, *et al.*, *Second Report and Order*, 8 FCC Rcd 7700, 7751, ¶ 126 (1993).

[30] *Id.* at 7752, ¶ 126.

requirements expire. As the Commission points out, certain provisions of Section 272(e) are not subject to the three-year expiration period.[31] Specifically, Sections 272(e)(1) and (e)(3) remain intact and are fully enforceable. These safeguards: (1) prohibit a BOC from discriminating against unaffiliated carriers by delaying competitors' requests for exchange service and exchange access (Section 272(e)(1));[32] and (2) require a BOC to impute to itself an amount for access no less than that charged to interexchange carriers (Section 272(e)(3)).[33]

A. Section 272(e)(1) Will Continue to Apply to a BOC with Integrated Long Distance Operations Post Sunset.

The Commission asks whether Section 272(e)(1) is sufficient to ensure nondiscrimination in the fulfillment of requests from unaffiliated interexchange carriers or whether the adoption of performance measures for special access and unbundled network elements ("UNEs") are necessary as a post-sunset and post-integration safeguard.[34] As discussed more fully below, no additional rules are necessary. The plain language of Section 272(e)(1) is unambiguous – a BOC must fulfill requests for service from non-affiliates within the same time period that it fulfills a request for an affiliate or itself. This obligation is clear. Accordingly, additional regulations or reporting obligations adopted pursuant to Section 272(e)(1) would be unwarranted and redundant with already existing requirements.

The Commission has already interpreted Section 272(e)(1) to require BOCs to "disclose

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[31] *FNPRM*, ¶ 45.

[32] 47 U.S.C. § 272(e)(1).

[33] 47 U.S.C. § 272(e)(3).

[34] *FNPRM*, ¶ 47.

to unaffiliated entities information regarding service intervals in which BOCs provide service to themselves or their affiliates."[35] Thus, BOCs are already subject to reporting requirements pursuant to this provision. The integration of a BOC's long distance operations does not eliminate the nondiscrimination requirement set forth in Section 272(e)(1). A BOC remains subject to this obligation regardless of whether or not it offers in-region, interexchange services through a separate affiliate. Therefore, any additional requirements adopted pursuant to Section 272(e)(1) are unnecessary.

B. The Commission Should Not Adopt Special Access Performance Measures as an Alternative to the Section 272 Requirements.

The Commission should not impose performance measures for special access services on BOCs after the separate affiliate requirements expire. First, the market for special access is highly competitive. A report submitted as part of BellSouth's comments in the pending special access performance measures proceeding[36] indicates that, during the last fifteen years, the number of special access competitors nationwide has grown steadily and substantially.[37] In addition, this report concludes that "both wholesale and retail buyers of Special Access services in BellSouth's territory are likely to have multiple choices of competitive alternatives to that company's Special Access services."[38] Clearly, competition in this market is widespread and

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[35] *LEC Classification Order*, 12 FCC Rcd at 15823, ¶ 113.

[36] *Performance Measurements and Standards for Interstate Special Access Services, et al.*, CC Docket No. 01-321, *et al.*, *Notice of Proposed Rulemaking*, 16 FCC Rcd 20896 (2001).

[37] "Special Access Competition," The Eastern Management Group, at 2 (Jan. 22, 2002) ("Special Access Report").

[38] *Id*.

renders performance measures unwarranted. Thus, the Commission should not distort the marketplace by establishing detailed performance measures and standards for special access.

Second, BOCs are already subject to reporting requirements for access services. Under the Commission's current rules, BOCs must report average installation intervals, mean time to repair, and percent of commitments met (*i.e.*, commit to a due date and meet that committed due date) (ARMIS (Automated Reporting Management Information System) Report 43-05).[39] These data are reported annually and are readily available to carriers. All of these data can easily be used to assess BellSouth's performance. Therefore, no additional reporting requirements for special access services are necessary due to the absence of a Section 272 affiliate.

Moreover, BOCs do not have any incentive to engage in conduct that favors their end user special access customers over their carrier customers. Such a discriminatory plan would have significant financial implications because the largest special access customers are carriers. Given the large revenue stream generated from the provision of special access services to these carriers, it would be contrary to the financial interest of a BOC to favor its end user customers over its carrier customers.

Apart from the fact that there is no economic incentive to engage in discriminatory conduct in the special access arena, such conduct could not escape detection. Carriers vigilantly monitor the quality of the access services provided to them and insist on immediate corrective action if there is a service disruption. As the Commission has found,

> IXCs often have good bargaining positions when purchasing services from incumbent LECs because they purchase large volumes of telecommunications services on an individual basis. IXCs are also more

[39] *See Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, *Memorandum Opinion and Order*, 6 FCC Rcd 2974 (1991) (*"Service Quality Order"*).

> likely to possess the analytical expertise and resources needed to protect themselves against service quality degradation.[40]

Thus, carriers would quickly discover any preferences extended to end user customers exclusively, because these same end users are also customers of the carriers. Dissatisfied end users would most certainly complain to their service providers. Moreover, the mere suspicion of inappropriate conduct has always been sufficient for carriers to pursue enforcement actions. There is absolutely no reason to believe that carriers would hesitate to file complaints if they believed BOCs were discriminating against them. Thus, there is no justification for applying performance measures and standards for special access to BOCs that have elected to integrate their long distance operations post sunset.

C. The Commission Need Not Adopt Performance Measures for Unbundled Network Elements as an Alternative to the Section 272 Requirements.

As with special access, the Commission is deciding in a separate proceeding, whether to adopt a national set of performance measures for UNEs.[41] Not only have state commissions already established extensive metrics for UNEs, but also such metrics are completely unrelated to the fulfillment of the Section 272(e)(1) nondiscrimination obligation. Consequently, the Commission should not impose upon a BOC a set of metrics for UNEs when the separate affiliate requirements expire.

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[40] *2000 Biennial Regulatory Review – Telecommunications Service Quality Reporting Requirements*, CC Docket No. 00-229, *Notice of Proposed Rulemaking*, 15 FCC Rcd 22113, 22125, ¶ 39 (2000).

[41] *Performance Measurements and Standards for Unbundled Network Elements and Interconnection*, *et al.*, CC Docket No. 01-318, *et al.*, *Notice of Proposed Rulemaking*, 16 FCC Rcd 20641 (2001).

There is absolutely no nexus between UNE performance measures and a BOC's conduct in the provision of interexchange services either through an affiliate or an integrated business. As the Commission has previously concluded, performance measures for UNEs "were intended to assist incumbents, new entrants, and regulators in evaluating an incumbent's performance in meeting its statutory obligations."[42] These performance measures have been used as tools for assessing a BOC's compliance with the Section 271 checklist by ensuring that competitors obtaining UNEs receive a comparable level of service from the BOC to that which the BOC employs in providing its retail local services. Although these standards may provide value in assessing a BOC's conduct in the local exchange market, they bear no relation to a BOC's conduct in the interexchange market. Accordingly, the Commission should not link a BOC's provision of long distance services on an integrated basis to the satisfaction of certain UNE performance measures.

Moreover, existing reports provided by BOCs today allow competitors, the Commission, and state commissions to monitor a BOC's performance. As part of its compliance with Section 271, BellSouth is required to provide performance measurement reports on a monthly basis to each of its states.[43] BellSouth reports in excess of 2,000 measurements each month in each of its

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[42] *Id*. at 20646-47, ¶ 9; *see also Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, CC Docket No. 98-56; RM-9101, *Notice of Proposed Rulemaking*, 13 FCC Rcd 12817, 12820, ¶ 3 (1998).

[43] *See, e.g., Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., And BellSouth Long Distance, Inc for Provision of In-Region, InterLATA Services In Georgia and Louisiana*, CC Docket No. 02-35, *Memorandum Opinion and Order*, 17 FCC Rcd 9018, 9189, ¶ 308 (2002); *Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., And BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina,* WC Docket No. 02-150, *Memorandum Opinion and Order*, 17 FCC Rcd 17595, 17765, ¶ 304 (2002); *Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and*

nine states. Included in these reports are performance measures for ordering, provisioning, maintenance and repair, and billing functions, including processing for UNE-P conversion orders and loop provisioning. BellSouth also reports data on its change management process. While BellSouth contends that the breadth of the current measurement set is unnecessary, certainly additional UNE performance measures and standards would be redundant.

D. Section 272(e)(3) Will Continue to Apply to a BOC with Integrated Long Distance Operations Post Sunset.

Section 272(e)(3) is another statutory provision that precludes the potential discriminatory pricing referenced by the Commission.[44] This section requires a BOC to impute to itself an amount for access no less than that charged to unaffiliated interexchange carriers.[45] The Commission previously refused to establish additional requirements to implement this provision. It reasoned that, "because the provision of services that fall under section 272(e)(3) must either be tariffed or made publicly available under section 252(h), unaffiliated interexchange carriers will be able to detect discriminatory arrangements."[46] The Commission also found that "further rules addressing predatory pricing by BOC section 272 affiliates are not necessary because adequate mechanisms are available to address this problem,"[47] including Sections 201 and 202 of the Act. Thus, as the Commission concluded in the *LEC Classification*

BellSouth Long Distance, Inc., for Authorization To Provide In-Region, InterLATA Services in Florida and Tennessee, WC Docket No. 02-307, *Memorandum Opinion and Order*, 17 FCC Rcd 25828, 25923-24, ¶ 183 (2002).

[44] *See FNRPM*, ¶ 48.

[45] *See NPRM*, 17 FCC Rcd at 9925, ¶ 25.

[46] *Non-Accounting Safeguards Order*, 11 FCC Rcd at 22029, ¶ 257.

[47] *Id.*, ¶ 258.

Order, Section 272(e)(3) "serves to constrain a BOC's ability to engage in discriminatory pricing of its exchange and exchange access service."[48] Similar to Section 272(e)(1), this statutory requirement will continue to apply to a BOC offering in-region, interexchange services on an integrated basis post sunset; therefore, there is no need to establish redundant or superfluous regulations after the separate affiliate requirements have expired.

Clearly, Sections 271(e)(1) and (3) are just two of a number of statutory provisions that prohibit a BOC from engaging in unlawful discrimination. Sections 201 and 202 add further statutory protection by prohibiting discriminatory conduct and unlawful pricing.[49] In addition, the Commission retains its authority to investigate compliance either on its own[50] or through the Section 208 complaint process.[51] Given the full suite of statutory and regulatory requirements that exist today and will continue to apply post sunset, it is clear that no additional regulations are necessary to curtail possible anticompetitive conduct by BOCs providing in-region, interexchange services on an integrated basis.

E. Sections 272(e)(2) and (4) Do Not Apply Post Sunset Regardless of the Existence of a Separate Affiliate.

The existence of the proven safeguards identified above makes the Commission's suggestion to modify its interpretation of Sections 272(e)(2) and (4) in such a way as to support

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[48] *LEC Classification Order*, 12 FCC Rcd at 15823, ¶ 115.

[49] *See* 47 U.S.C. §§ 201 and 202.

[50] *See* 47 U.S.C. §§ 154(i), 201-205, 218-220 & 403.

[51] *See* 47 U.S.C. § 208.

continuing their application post sunset completely unwarranted.[52] As the Commission previously found, "the plain language of the statute compels [it] to conclude that sections 272(e)(2) and 272(e)(4) can be applied to a BOC after sunset *only if that BOC retains a separate affiliate*."[53] BellSouth agrees with the Commission's finding that these provisions no longer apply in the absence of an affiliate and urge the Commission not to modify its prior interpretation. The statutory language simply does not support any other interpretation.

To comply fully with the statute, however, the Commission must take an additional step. It should find that a BOC that elects to continue to provide long distance services through a separate affiliate <u>post sunset</u> is no longer subject to Sections 272(e)(2) and (4). Any other interpretation would penalize a BOC that elects to operate an affiliate for business reasons *after* the Section 272 requirements have lawfully sunset. While BellSouth agrees with the Commission that, if there is no affiliate, Sections 272(e)(2) and 272 (e)(4) cannot apply "because there will be no frame of reference for the BOC's conduct,"[54] it also believes that post sunset, these statutory provisions do not apply to a BOC that decides to retain a separate affiliate.

It would be illogical to retain these requirements in the presence of an affiliate after the sunset, given that the theoretical harms associated with integration are minimized when there is

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[52] *See FNPRM*, ¶ 46. Section 272(e)(2) states that a BOC and its affiliate "shall not provide any facilities, services, or information concerning its provision of exchange access to [a Section 272(a) affilate] unless such facilities, services, or information are made available to other providers of interLATA services in that market on the same terms and conditions." 47 U.S.C. § 272(e)(2). Section 272(e)(4) states that a BOC or its affiliate "may provide interLATA or intraLATA facilities or services to its interLATA affiliate if such services or facilities are made available to all carriers at the same rates and on the same terms and conditions, and so long as the costs are appropriately allocated." 47 U.S.C. § 272(e)(4).

[53] *Non-Accounting Safeguards Order,* 11 FCC Rcd at 22035, ¶ 270 (emphasis added).

[54] *Id*.

a structurally separate affiliate. According to this logic, there should be less concern about possible anticompetitive conduct when an affiliate exists, thereby reducing the need for these additional requirements in a post-sunset environment. Once the structural separation period expires, Sections 272(e)(2) and (4) no longer apply, regardless of whether a separate affiliate exists. Any other outcome would be inconsistent with the letter and spirit of this provision.

F. A Host of Commission Regulations Will Continue to Apply to a BOC with Integrated Long Distance Operations Post Sunset.

In addition to the statutory safeguards described above, there are a variety of Commission regulations that further protect against potential abuses by BOCs. For example, existing price cap regulation is a tool to prevent potential BOC misconduct. As the Commission has correctly noted, "because price cap regulation severs the direct link between regulated costs and prices, a carrier is not able automatically to recoup misallocated nonregulated costs by raising basic service rates, thus reducing the incentive for the BOCs to allocate nonregulated costs to regulated services."[55]

In addition, the Commission's accounting rules are in place. These rules, however, are not necessary to support the determination that BOCs are non-dominant when they provide in-region, interLATA services on an integrated basis. With price regulation supplanting cost-of-service regulation, accounting safeguards are, at best, mere surplusage and, at worst, very costly mechanisms without any real benefit. Indeed, the Commission's accounting rules operate in a manner that is contrary to the public interest because they require subject carriers to operate in a

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[55] *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards*, CC Docket No. 90-623, *Report and* Order, 6 FCC Rcd 7571, 7596, ¶ 55 (1991) (*"BOC Safeguards Order"*), *vacated in part and remanded sub nom. California v. FCC*, 39 F.3d 919 (9th Cir. 1994), *cert. denied*, 514 U.S. 1050 (1995).

non-economic manner. Because Part 64 accounting is not only unnecessary for a BOC to be non-dominant in the provision of in-region, interexchange services but also imposes significant transactional costs, BellSouth believes that upon integration, long distance activities should be treated as regulated under Part 64.[56]

With respect to the price squeeze issue, a BOC's ability to engage in a predatory price squeeze is no more probable without an affiliate as with one due to the statutory and regulatory safeguards discussed above. Price squeeze concerns focus on the relationship between access prices and retail interexchange prices. An integrated BOC could allegedly engage in a price squeeze either by (1) raising access prices to competitors while pricing its own retail interexchange services on the basis of the presumably lower incremental cost the BOC incurs in providing access or (2) maintaining existing access prices while pricing retail interexchange services below the level of access prices.[57] As discussed above, however, the various statutory and regulatory safeguards (*e.g.,* Section 272(e)(3)) would prevent the BOC from implementing any of these theoretical price squeeze scenarios. In addition, with respect to a BOC's ability to

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[56] Section 254(k) does not require that interLATA facilities be accounted for as non-regulated. This provision provides as follows: "The Commission . . . shall establish necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services." 47 U.S.C. § 254(k). Cost allocation under Part 64, however, is not necessary to protect universal service for a number of reasons. First, contributions to the universal service fund are based on interstate revenues. Price cap carriers no longer determine prices to customers based on costs. A carrier's revenue is based on the prices it charges customers. Accordingly, cost allocation will not affect the contributions to the universal service fund. Second, the distributions of universal service funds are based on a hypothetical cost model and thus the Part 32 or Part 64 cost structure has no impact on distributions. Finally, prices charged for services included in the definition of universal service are not tied to changes in accounting costs and thus the concept of bearing a share of costs is irrelevant.

[57] *See FNPRM*, ¶ 29.

raise access prices to competitors, the Commission has concluded that "the ability of competing carriers to acquire access through the purchase of unbundled network elements enables them to avoid originating access charges and thus partially protect themselves against a price squeeze."[58]

In sum, the host of statutory and regulatory requirements listed above do not go away after the separate affiliate requirements expire. They will continue to exist and will protect competition more efficiently and at a significantly lesser expense than imposing additional requirements on a BOC providing in-region, interexchange services on an integrated basis rather than through a separate affiliate. Accordingly, there is no need to adopt any additional regulations to protect against competitive harms.

IV. THE IMPOSITION OF DOMINANT CARRIER REGULATION ON A BOC'S PROVISION OF IN-REGION, INTEREXCHANGE SERVICES ON AN INTEGRATED BASIS IS UNNECESSARY AND WOULD BE COSTLY AND HARMFUL TO COMPETITION AND CONSUMERS.

The Commission should not subject a BOC's provision of in-region, interexchange services outside of a separate affiliate to dominant carrier regulation. The application of such regulation to a BOC's in-region, long distance services would be misplaced, overly burdensome, and anticompetitive.

According to the Commission, "dominant carrier regulations are generally designed to prevent a carrier from raising prices by restricting its output rather than to prevent a carrier from

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[58] *LEC Classification Order*, 12 FCC Rcd at 15830, ¶ 126. Even in those instances where a BOC has been granted pricing flexibility, the prerequisite for such flexibility is a determination that competition constrains the ability of a BOC to raise access prices. *Access Charge Reform, et al.*, CC Docket No. 96-262, *et al.*, *Fifth Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd 14221 (1999) ("*Pricing Flexibility Order*").

raising its prices by raising its rivals' costs."[59] Thus, the objective of dominant carrier regulation is "to protect consumers from unjust and unreasonable rates, terms and conditions and unreasonable discrimination in the provision of communications services."[60] As explained more fully below, such regulation is unnecessary.

In general, dominant carriers, which by definition possess market power, are subject to more stringent Title II regulations (*e.g.,* price cap regulation, extensive tariff filing requirements, additional Section 214 obligations) than non-dominant carriers, which lack market power.[61] Because BOCs not only lack market power in the in-region, interexchange market, but also are constrained in their ability to exercise alleged power in the local exchange and exchange access markets, integrated BOCs should be regulated as non-dominant in the provision of in-region, long distance services. Moreover, because dominant carrier regulation is an inappropriate mechanism for addressing the Commission's concerns about potential BOC misconduct, the Commission should accord the BOCs' provision of interexchange services non-dominant status. The statutory and regulatory safeguards described in Section III are better suited to addressing concerns about cross-subsidization and discrimination and do so in a less burdensome and costly manner than dominant carrier regulation.

It is important to remember that declaring a BOC to be non-dominant in the provision of in-region, interexchange services outside a separate affiliate does not remove that carrier from regulation. It continues to be subject to key elements of Title II of the Act. Specifically, non-

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[59] *LEC Classification Order*, 12 FCC Rcd at 15804, ¶ 85.

[60] *FNPRM*, ¶ 36.

[61] *See id.*, ¶¶ 36-37.

dominant carriers must offer interstate services under rates, terms, and conditions that are just, reasonable, and not unduly discriminatory pursuant to Sections 201 and 202. In addition, non-dominant carriers also remain subject to the Commission's complaint process. Thus, non-dominant status does not remove carriers from under regulation.

The Commission should follow the same approach here as when it refused to apply dominant carrier regulation to the BOCs' Section 272 affiliates.[62] The Commission found that "regulat[ing] BOC in-region interLATA affiliates as dominant carriers generally would not help to prevent improper allocations of costs, discrimination by the BOCs against rivals of their interLATA affiliates, or price squeezes by the BOCs or the BOC interLATA affiliates."[63] It further concluded that "application of these regulations to a carrier that does not have the ability to leverage its market power by restricting its own output could lead to incongruous results."[64]

BellSouth urges the Commission to reach a similar conclusion in the instant proceeding. As demonstrated in Section II, a BOC does not possess market power in the interexchange market, regardless of whether a Section 272 affiliate exists. In the absence of market power, a BOC lacks the ability to raise long distance prices by restricting output – conduct that dominant carrier regulation is supposed to constrain. Moreover, as the Commission previously found, dominant carrier regulation is not an effective or appropriate tool to address potential anticompetitive conduct by BOCs in the interexchange market regardless of the existence of a separate affiliate.

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[62] *LEC Classification Order*, 12 FCC Rcd 15756.

[63] *Id*. at 15763, ¶ 6.

[64] *FNPRM*, ¶ 38.

In addition, regulating BOCs as dominant in the provision of in-region, long distance services would impose significant costs and burdens on BOCs without any countervailing consumer benefits. As the Commission has found, dominant carrier regulation creates market inefficiencies, imposes unnecessary costs, and inhibits carriers "from quickly introducing new services and from quickly responding to new offerings by . . . rivals."[65] In the absence of dominant carrier treatment, BOC interLATA affiliates have been able to enter the long distance market by developing innovative service and price offerings and increasing choices for consumers. All of this progress could come to a dramatic halt if the Commission saddles these carriers with dominant carrier regulation. Given that the costs of dominant carrier regulation far outweigh any perceived benefits in the instant case, the Commission should accord non-dominant status to a BOC's provision of in-region, interexchange services outside of a separate affiliate.

Moreover, there is no justification for applying a different set of standards to BOCs than those applied to competitors such as AT&T. As demonstrated above, BOCs lack market power and, as such, are not dominant players in the interexchange market. Subjecting the BOCs to burdensome dominant carrier regulation would place these new entrants at a significant competitive disadvantage. Such unjustified regulatory disparity should be avoided.

A. Tariff Filing Requirements

There is no need to require BOCs providing in-region, long distance services on an integrated basis to file tariffs for these services. One of the principal elements of dominant carrier regulation is the tariff filing requirements. Dominant carriers must file tariffs that satisfy certain

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[65] *AT&T Non-Dominance Order*, 11 FCC Rcd at 31, ¶ 27.

notice periods and include supporting documentation, such as cost data in certain instances. BellSouth urges the Commission to continue mandatory detarriffing for the interstate and international interexchange services provided by BOCs operating in the absence of an affiliate after the sunset. The same conclusions the Commission reached when it forbore from applying tariff regulation to non-dominant interexchange carriers are equally applicable here.[66]

Tariff filings disserve the public interest by interfering with the functioning of a competitive market. As the Commission has found:

> [T]ariff filings by nondominant interexchange carriers for interstate, domestic, interexchange services may facilitate, rather than deter, price coordination, because under a tariffing regime, all rate and service information is collected in one, central location. Therefore, we believe that complete detariffing, along with additional, competitive, facilities-based entry into the interstate, domestic, interexchange market, will help deter attempts to increase rates for interstate, domestic, interexchange services through tacit price coordination.[67]

Clearly, tariff filing requirements are a drag on competitive markets. They delay a market participant's ability to engage in pricing and quality initiatives or to offer a competitive response to a competitor's initiatives. In addition, they give competitors an opportunity to impede initiatives or responses by others in the market through the filing of objections. The preparation, filing, and defense of tariff submissions imposes substantial costs as well, and these costs impede a carrier's ability to initiate and respond to competitive developments and customer demands. Moreover, the entire tariff process is an unnecessary waste of both public and private resources. The Commission recognized these significant administrative burdens when it refused

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[66] *Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act, as amended*, CC Docket No. 96-61, *Second Report and Order*, 11 FCC Rcd 20730 (1996) ("*Detariffing Order*").

[67] *Id*. at 20744, ¶ 23; 20760-61, ¶ 53.

to impose tariff filing requirements on a BOC's Section 272 affiliate.[68] For the same reasons, the Commission should not impose tariff filing obligations on BOCs providing in-region, long distance services on an integrated basis.

Moreover, requiring BOCs to file tariffs while not imposing the same requirement on the incumbent IXCs would be discriminatory. Such action would require the BOCs to disclose their plans to the competitors that control the majority of the interexchange market. This would irretrievably handicap the BOCs in attempting to introduce new services and offer competitive prices, thereby diminishing competition and consumer choice. In addition, as the Commission previously concluded, imposing tariff obligations only on the BOCs "might facilitate tacit coordination of prices,"[69] which the Commission has long sought to eliminate.[70]

In sum, there is no reason for the Commission to reverse its policy by micromanaging the already competitive interexchange market through tariff regulation. The Commission need only look to the current long distance market to reach the conclusion that it should not impose tariff requirements on BOCs operating on an integrated basis post sunset.

B. Price Cap Regulation

As with tariff filing obligations, there is no justification for applying price cap regulation to a BOC's interexchange services. To do so would be a giant leap backward in the Commission's deregulatory efforts. Price cap regulation of a BOC's long distance services would significantly impede a BOC's ability to compete effectively in the interexchange market.

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[68] *LEC Classification Order*, 12 FCC Rcd at 15808, ¶ 89.

[69] *Id*. at 15807, ¶ 89.

[70] *See Detariffing Order*, 11 FCC Rcd 20730.

Moreover, price cap regulations continue to apply to a BOC's access services. A BOC's ability to leverage its alleged power in the local market is the Commission's real concern, and, as demonstrated above in Section II, a BOC cannot use its position in the local exchange market to adversely affect the interexchange market. Thus, there is neither an economic incentive nor regulatory basis to impose price cap regulations on a BOC's long distance services.

Moreover, the purpose of price cap regulation is to ensure that rates remain reasonable in the absence of a competitive market. There can be no debate that competition in the interexchange market is more than sufficient to discipline competitors and maintain reasonable rates. Price cap regulation, at best, would be redundant and, at worst, would distort the market. Accordingly, the Commission should not subject a BOC's provision of interexchange services on an integrated basis to such regulation.

C. Section 214 Requirements

Finally, there is no reason to apply the full breadth of Section 214 requirements to a BOC's provision of in-region, interexchange services on an integrated basis. As the Commission has previously found, "stringent section 214 requirements were not designed to address potential problems associated with BOC entry into competitive markets, and may not be the most efficient means of addressing the concerns raised by a BOC's entry into the long distance marketplace."[71] For example, there is no justification for subjecting a BOC seeking to discontinue the provision of a long distance service to a 60-day notice period.[72] No other long distance provider must satisfy such a requirement. Moreover, given the intense competition in the interexchange

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[71] *FNPRM*, ¶ 38.

[72] *See* 47 C.F.R. § 63.71(c).

market, customers should have no difficulty finding substitute services from the more than 1000 long distance carriers in the marketplace today. Clearly, this aspect of dominant carrier regulation is unnecessary to protect consumers and need not be applied to BOCs providing long distance services on an integrated basis.

As BellSouth indicated above, the classification of a carrier as non-dominant does not mean that that carrier is not subject to any regulation. As has been repeated throughout this pleading, there are multiple statutory and regulatory safeguards that remain fully applicable to a BOC providing in-region, interexchange services on an integrated basis. Less costly and less burdensome requirements therefore eliminate the need for dominant carrier regulation in this instance.

V. THE COMMISSION SHOULD NOT CONDITION NON-DOMINANT TREATMENT ON COMPLIANCE WITH ANY SEPARATE AFFILIATE REQUIREMENTS.

BellSouth urges the Commission not to require compliance with any separate affiliate requirements as a condition for non-dominant treatment (as is the case for independent LECs today) post sunset.[73] Under the Commission's current rules, in order to qualify for non-dominant treatment, the independent LEC's affiliate providing in-region, interstate, interexchange service must: (1) maintain separate books of account; (2) not jointly own transmission or switching facilities with the LEC; and (3) acquire any services from its affiliated exchange companies at rates, terms, and conditions available through tariffs or available to other requesting carriers through interconnection agreements.[74]

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[73] *See FNPRM*, ¶ 46.

[74] *LEC Classification Order*, 12 FCC Rcd at 15849-51, ¶¶ 162-164.

Clearly, the separate affiliate requirements imposed on BOCs are much more stringent than those applied to independent LECs. For example, not only is actual structural separation not required for independent LECs, but these carriers may share personnel and other resources and assets with their interLATA affiliates.[75] Notwithstanding the existence of a streamlined set of separate affiliate requirements, the Commission should not impose any additional requirements on BOCs post sunset.

As the Commission has recognized, "Congress made the judgment that the BOCs should be subject to the structural and nondiscrimination safeguards in section 272 only temporarily after entry into the long distance market."[76] Thus, the complete sunset of the relevant provisions is the default. To support the continued application of the separate affiliate requirements as a condition of non-dominant status, there must be substantial and specific evidence establishing that, in the absence of the separate affiliate requirements, the public interest and competition would be adversely affected. This evidentiary burden is extremely difficult to overcome, especially in light of the fact that there is no consumer or public interest benefit associated with the separate affiliate requirements, and existing, less burdensome safeguards are more than sufficient to protect against any potential threat to competition.

Any result other than complete expiration of the relevant Section 272 safeguards would nullify the statutory presumption that these obligations would expire three years after a BOC obtained Section 271 relief. Therefore, simply eliminating the structural separation requirement and allowing BOCs to share personnel and other assets (as is the case for independent LECs)

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[75] *Id*. at 15851, ¶ 165.

[76] *NPRM*, 17 FCC Rcd at 9920, ¶ 8.

does not go far enough. These requirements, though fewer than the full panoply of Section 272 requirements, are not contemplated by the Act and would impose unnecessary costs and burdens on only the BOCs.

Moreover, as demonstrated above, other statutory and regulatory requirements (*e.g.,* Sections 272(e)(1) and (3), Sections 201 and 202, access charge rules, imputation requirements, cost allocation rules, price cap regulation) prevent anticompetitive conduct by BOCs regardless of whether they provide in-region, interexchange services through a separate affiliate or on an integrated basis. The application of even a modified set of separate affiliate requirements would result in inefficiencies, restrictions, and costs that would adversely affect the BOCs' ability to compete in the interexchange marketplace. Accordingly, the Commission should allow the expiration of the relevant separate affiliate requirements as contemplated by the Act and refrain from imposing any modified obligations upon the BOCs post sunset as a condition for non-dominant treatment.

VI. CONCLUSION

For all the foregoing reasons, BellSouth urges the Commission to take the actions requested herein. The Commission should find that a BOC providing in-region, interexchange telecommunications services in the absence of a separate affiliate does not possess market power and therefore should not be subject to dominant carrier regulation. In addition, the Commission should not adopt any additional or modified safeguards to govern BOC conduct. There are more than adequate statutory and regulatory protections in place to preclude any potential anticompetitive conduct in both the local and long distance markets.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that I have 30th day of June 2003 served the following parties to this action with a copy of the foregoing **COMMENTS OF BELLSOUTH** by electronic filing or electronic mail addressed to the parties listed below.

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